West, Andrew
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Abstract

South Africa's principal corporate governance report aspires to an 'inclusive' approach to corporate governance, in which companies are clearly advised to consider the interests of a variety of stakeholders. Yet, in common with many other countries, there is little discussion of the theoretical foundations and assumptions implicit in the recommended approach to corporate governance. The purpose of this article is to provide an analysis of corporate governance and the corporate environment in South Africa in terms of existing theory and models of corporate governance, and to provide a critique based on a consideration of traditional African values and the socio-economic necessities of post-apartheid South Africa. The result is the identification of an incompatibility between the current corporate environment in South Africa and the given exposition of African values. Some prospects for change are then identified.

Key words

African Philosophy, Corporate Governance, Inclusive approach, South Africa, Stakeholder

List of abbreviations

ANC	African National Congress

It has been observed that there is little real consideration of the theories underlying the different approaches taken to corporate governance, and of the assumptions that the varying approaches entail (e.g. Letza et al., 2004). Just as governance in the political arena faces differing challenges and necessities in differing social and economic settings, it is expected that corporate governance would equally have to adapt in differing environments. South Africa has in the past been seen as a useful case study for investigations into racism and political change, yet with characteristics of both developed and developing countries it also provides opportunities for studies in corporate governance.

The August 2003 issue of Internal Auditor carried an interview with the champion of corporate governance reform in South Africa, Mervyn King, and proclaimed that “South Africa has taken the lead in defining corporate governance in broadly inclusive terms” (Barrier, 2003). At the southern tip of the poorest continent, still dealing with vestiges of apartheid and colonialism, and yet at the same time maintaining a ‘first-world’ financial infrastructure and efficient capital market, any developments in corporate governance are bound to reflect competing economic and social interests. The result has been the advocacy of an ‘inclusive’ approach in corporate governance recommendations, principally the King reports issued in 1994 and 2002.

The purpose of this article is to provide an analysis and critique of the corporate governance structures in place in South Africa, with particular reference to the theoretical underpinnings of corporate governance models and the South African context, African values and socio-economic necessities.

MODELS OF CORPORATE GOVERNANCE

The theory of corporate governance is frequently described in terms of two apparently opposing models: the shareholder and stakeholder models (Freeman and Reed, 1983; Goodpaster, 1991; Donaldson and Preston, 1995; Turnbull, 1997; Letza et al., 2004). The differences between these two models reflect different theories of the corporation. The shareholder model holds the view that the corporation is an extension of its owners (the shareholders), it has the goal of providing goods or services to customers for the benefit of its owners, and that therefore it is required to be accountable and responsible towards its owners (Friedman, 1970). This view is dominant in the USA, and has become generally accepted in English-speaking countries.

Within the shareholder model some commentators suggest further distinctions. Keasey et al. (in Letza et al., 2004) for instance subdivide the shareholder model into the typical principal-agent (or 'finance') model and the myopic market model, with the latter being more specifically concerned with the differences between managerial and shareholder interests over time horizons - the argument being that management favours short-term increases in market value over long-term benefits to shareholders.

All variants of the shareholder model however maintain certain key assumptions. These include the fundamental right to individual private ownership and the belief that market forces will achieve economic efficiency. The right to individual private ownership lends itself to behaviour motivated by self-interest which then leads to the main problem in this model (according to its advocates) - the conflicting interests of owners and managers. This conflict in the principal-agent relationship has led to the development of reforms and strategies that are aimed at harmonising the goals of the owners as principal and management as the agent. The solution to the problem is seen to lie in a combination of efficient contracting (Jensen and Meckling, 1976) and the application of market forces in the managerial labour market (Fama, 1980). In line with these assumptions Letza et al. (2004, p.244) note that within the shareholder model corporate governance is “best addressed by removing restrictions on factor markets and the market in corporate control, together with strengthening the incentive system, … introducing a voluntary code and appointing non-executive directors.”

In contrast, the stakeholder model is based on the view of the corporation as a social entity that has responsibility (and accountability) to a variety of stakeholders, in its widest sense including all those that may influence or are influenced by the corporation (Freeman and Reed, 1983), and usually encompassing owners, suppliers, customers, employees, management, government and local communities. Donaldson and Preston (1995) identify three aspects of stakeholder theory – descriptive, instrumental and normative, where descriptive theory presents the observation that organisations have stakeholders, where instrumental theory refers to the acknowledgement of responsibility towards stakeholders as a means to achieving greater economic efficiency, and where normative theory draws on moral and community values that require stakeholders be considered as an end in themselves. Goodpaster (1991) makes a similar distinction between a ‘strategic stakeholder synthesis’ in which shareholders’ interests are considered insofar as they affect the corporation’s primary economic objective, and a ‘multi-fiduciary stakeholder analysis’ in which the interests of the various stakeholders (including shareholders) are treated as equally important. These distinctions within shareholder theory are far from trivial, as an instrumental stakeholder theory that ultimately serves to improve the profitability of the corporation (for the benefit of the shareholders) is unlikely to find disfavour amongst shareholder theorists. The debate lies rather in the differences between the instrumental and normative versions of stakeholder theory, and whether or not the economic objectives of the corporation can, and should, be compromised.

Corporate governance is also frequently categorised as either Anglo-American or European. Typically the Anglo-American approach tends towards the shareholder model whereas the European (and Japanese) approach tends towards the stakeholder model. Reed (2002) notes that developing countries by and large adopt corporate governance reforms in line with the Anglo-American approach, which he considers to be characterised by the following (p.230):

1. A single-tiered board structure which gives almost exclusive primacy to shareholder interests;
2. A dominant role for financial markets;
3. A correspondingly weak role for banks; and
4. Little or no industrial policy involving firms cooperating with government agencies (and labour bodies).

These characteristics correspond well with the assumptions underlying shareholder models of corporate governance, particularly the individual right to private ownership and the belief in the efficiency of the markets. Letza et al. (2004, p.251) however note that instrumental stakeholder theory is “attuned” to the Anglo-American model, and that “there has been a continuous shift of paradigms and mindsets from shareholding to stakeholding in the Anglo-American setting" (p.252).

CORPORATE GOVERNANCE IN SOUTH AFRICA

The history of South Africa includes several centuries of colonisation by Dutch and English settlers, followed by more than four decades of apartheid, all of which was characterised by continual conflict between settlers of European descent and indigenous Africans. By 1994, when the first non-racial democratic elections were held, South African society was consequently split along racial and economic lines. Unsurprisingly, the corporate landscape in South Africa reflects the centuries of colonialism and apartheid. Corporate law and corporate practice have been adopted mainly from the UK, and control over companies remains largely within the hands of the minority white population[1]. Applying Reed's characteristics of the Anglo-American model outlined above, it is apparent that South Africa's corporate structures fit this model. Firstly, a single-tiered board structure is standard, without any representation for stakeholders such as employees. Secondly, South Africa has an active stock exchange (the JSE Securities Exchange) which is rated as 'advanced emerging' by the FTSE (2004) *Provisional Quality of Markets Criteria* (the only factor preventing it being rated 'developed' is the GNI per capita figure for the country, which, it can be argued, is unrelated to the quality of the financial market). Rossouw et al. (2002, p.291), however, draw attention to the concentrated ownership of companies on the JSE securities exchange[2] as well as the "subdued" growth in mergers and acquisitions activity. Despite these concerns, the prevailing attitude amongst business leaders and government is that a free market system must be upheld – in 1997 President Nelson Mandela declared that it would be "impossible … to decide national economic policy without regard for the likely response of the markets" and two months later that the ruling African National Congress' (ANC) market-led policies were the only path to sustainable development (in Marais, 2002, p.91). Thirdly, banks do not maintain control over South African companies and maintain arms-length relationships with clients (Rossouw et al., 2002, p.294). Lastly, in terms of industrial policy the evidence is less clear. The government has committed itself to the privatisation of state assets, and endeavours to promote competition in some industries (such as telecommunications) by issuing additional licenses; however there has been significant intervention in the labour market with the Employment Equity Act of 1998, aimed at rectifying racial imbalances in the workplace by requiring firms to adopt and implement affirmative action policies[3], as well as the Broad-Based Black Economic Empowerment Act of 2003, which is aimed at increasing ownership of South African companies by the 'black'[4] population[5]. These acts represent a significant intervention and reveal the ANC's belief in the ability and efficiency of the market except when it comes to issues of 'transformation'. Nevertheless it is submitted that on the whole South Africa's corporate structures correspond substantially with the Anglo-American model.

Having considered the corporate environment it is necessary to examine the attempts at corporate governance reform in South Africa, and place these within a theoretical framework. Developing countries face a larger context when dealing with corporate governance in that they have to not only consider the issues of corporate collapse and creative accounting that have been the driving force behind corporate governance reforms in developed countries, but they must also consider the effects on economic development and of economic globalisation (Reed, 2002, p.223) and balance a locally acceptable and relevant corporate governance strategy with the need to meet international expectations. In this context, retired judge Mervyn King was appointed in 1994 to form a commission to establish a code on corporate governance in South Africa. South Africa's corporate governance reforms now centre around two reports - the *King Report on Corporate Governance* (King I) issued in November 1994 and the *King Report on Corporate Governance for South Africa – 2002* (King II) issued in March 2002 (Institute of Directors, 2002). The second report was commissioned partly as a result of changes in corporate governance worldwide, and after taking into account the political and economic uncertainty in the country which was prevalent when the first report was issued. Due to its currency, this paper will refer primarily to King II.

King II begins with a quote by Sir Adrian Cadbury, responsible for the Cadbury reports on corporate governance in the UK, which refers to the goal of "align[ing] as nearly as possible the interests of individuals, corporations and society". In line with corporate governance reports worldwide, King II refers to the "four primary pillars of fairness, accountability, responsibility and transparency" (Introduction, para. 23). A review of the topics covered by King II and corporate governance reports issued in the UK (the Combined Code, the Turnbull Guidance, the Smith Guidance and the Higgs report) reveals that very similar issues are addressed. Topics dealt with include boards of directors, directors' remuneration, internal control and risk management, and accounting and audit. The only area of significant difference is the section on Integrated Sustainability Reporting in King II for which there is no counterpart in the UK reports.

Given the Anglo-American nature of the South African corporate environment, the ties that many businesses and business leaders have with other Anglophone countries and the fact that control over South African companies remains largely in the hands of white South Africans, one may initially expect the King reports to uphold a traditional shareholder model of corporate governance. King II, however, describes its approach to corporate governance as ‘inclusive’. A review of the introduction to the report reveals that this is expressed through a number of related characteristics:

- All stakeholders should be considered:

> “The inclusive approach recognises that stakeholders such as the community in which the company operates, its customers, its employees and its suppliers need to be considered when developing the strategy of a company” (para. 5.3)

- Shareholders are to be considered as one of a number of stakeholders, albeit with their own particular interests:

> “The modern approach is for a board to identify the company’s stakeholders, including its shareowners …” (para. 5.1)

and

> “Because the shareowners have little or no protection, the quality of governance is of absolute importance to them” (para. 17.5)

- Directors’ responsibilities lie to the company, not the shareholders:

> “the so-called shareowner dominant theory … has been rejected by Courts in various jurisdictions … Consequently, directors, in exercising their fiduciary duties, must act in the interest of the company as a separate person” (para. 17.3)

It is clear that the ‘inclusive’ approach adopted is really a form of stakeholder theory (a view supported by Rossouw, 2002). The section on Integrated Sustainability Reporting provides a detailed example of how stakeholder concerns are addressed in the body of the report: it includes recommendations for reporting on non-financial aspects of the business, including transformation progress (employment equity and black economic empowerment), human capital development policies, safety and health concerns (with particular reference to HIV/AIDS), as well as recommendations for the establishment of processes governing organisational ethics (through the use of codes of ethics), environmental impact and social investment policies. All of these are clearly areas of significant concern to stakeholder groups such as employees, community groups and society at large. There are, however, a number of issues that can be raised which serve either to clarify or problematise this position:

1. <u>Responsibility or Accountability?</u>

Following the fiduciary duty that directors have to the corporation, the report states (Introduction, para. 5.1) that directors are “accountable” (in the sense that “one is liable to render an account”) to the company and “responsible” (in the sense that “one is liable to be called to account”) to relevant stakeholders. It goes on to state that “The stakeholder concept of being accountable to all legitimate stakeholders must be rejected for the simple reason that to ask boards to be accountable to everyone would result in their being accountable to no one." (Introduction, para. 5.1).

The logic behind this statement is unclear. No reason is given in the report as to why being accountable to all stakeholders would result in being accountable to no-one, and one could even suggest that the reference to a "simple reason" serves to discourage and deflect any serious consideration. This may still not present a problem if the reporting by directors is to the company itself, for the benefit of all stakeholders; however the traditional accounting paradigm of reporting to shareholders is maintained throughout the report, and no attempt is made to modify an accounting framework that shows company profits to be attributable to shareholders alone (see *IAS 1 – Presentation of Financial Statements*, para. 82 (International Accounting Standards Board, 2004)). The result is that the report appears to move away from a purely (Freeman-like) stakeholder approach as the directors are accountable to shareholders, and responsible (but not accountable) to other stakeholders - it seems that the good corporate governance principle of accountability is only applicable to shareholders[6].

This analysis of the inclusive approach is supported by Rossouw's (2005) description of the inclusive model of corporate governance evident across Africa as one "in which boards of directors are not merely accountable to shareholders but also responsible to other stakeholders of the company" (p.97). Note that the distinction between being accountable to the company and being accountable to shareholders has become blurred. It seems then that in some regard the traditional primacy of shareholder interests remains in King II.

2. <u>Justification for the inclusive approach</u>

The inclusive approach of King II is justified on several grounds:

- By appeal to improved economic efficiency for the company:

  "A company is likely to experience indirect economic benefits such as improved productivity and corporate reputation by taking [social responsibility] factors into consideration" (Introduction, para. 18.7).

- By appeal to current socio-economic conditions in South Africa:

  "… companies in South Africa must recognize that they co-exist in an environment where many of the country's citizens disturbingly remain on the fringes of society's economic benefits" (Introduction, para. 36).

- By appeal to traditional African values. The report (Introduction, para. 38) mentions a number of values considered to be characteristic of the African worldview and culture, including co-existence, collectiveness and consensus. The exclusion of stakeholders in decision-making would seem to run contrary to these principles.

In a similar fashion the section on Integrated Sustainability Reporting supports its recommendations by appealing to African values (Chapter 1, para. 8), the financial consequences of non-financial issues (Chapter 2, para. 7), the principle of accountability to shareholders as paramount (Chapter 2, para. 2), and the "moral obligation for directors to take care of the interests of investors and other stakeholders" (Chapter 3, para. 15). The evidence is clearly mixed, and there is support for both the instrumental and normative stakeholder approaches in the report. It would be erroneous however to classify King II as based entirely on either instrumental or normative stakeholder principles.

Concerns

King II has been commended as being 'world class' for its emphasis on social, environmental and ethical concerns (KPMG, in Rossouw, 2002, p.409; Barrier, 2003), referring in particular to the Integrated Sustainability Reporting section. However, as is typically the case in corporate governance reports, (and with the exception of certain disclosures required by the Employment Equity Act), all such reporting is voluntary and South African companies have tended to lag behind when it comes to social and environmental reporting. KPMG's *Integrated Sustainability Reporting in South Africa 2003* survey revealed that while more and more companies are providing some disclosure on sustainability-related issues, much of this disclosure is only superficial and general in nature (p.2). It also notes (p.2) that 20% of the companies surveyed from the JSE Securities Exchange produced a stand-alone non-financial report compared to 45% of the Global Fortune 250 companies[7]. The more recent *KPMG International Survey of Corporate Responsibility Reporting 2005* paints a more promising picture, noting that since 2002 reporting in this area by South African companies has improved, and "South Africa is not lagging far behind the rest of the world" (p. 16). Why South Africa should be lagging at all remains unclear.

It is also apparent that the same thinking that underlies corporate governance reforms in the UK and US (Friedman's approach) underlies much of the thinking in the South African corporate environment. Despite the legal setup, the owners of corporations are identified with shareholders in the financial media, and there has been no real stakeholder 'turn' in much corporate activity since the release of either King I or King II. Financial accounting practices are also no different to those in Western countries (they have even drawn closer over the last decade). The fact that in many cases companies can continue 'business as usual', albeit with some added non-financial reporting and additional committee structures, suggests that the stakeholder approach initially so evident in King II is accompanied by an implicit acceptance of existing shareholder-dominant structures.

It would be inappropriate not to mention that some effort was made in King II to acknowledge the African context. As mentioned above, the introduction closes with a list of certain aspects of African culture and values taken from an article by Shepherd Shonhiwa – a Fellow and Vice-Chairperson of the Institute of Directors in Southern Africa. These include, amongst others, collectiveness, an inclination towards consensus, humility and helpfulness and co-existence with others (para. 38). However, the fact that the introduction to the report opens with a quote from Adrian Cadbury (from the UK) and closes with a brief consideration of the African context, which appears to be little more than a postscript, as well as the attribution of the African values to an external source, suggests that the report's writers consider the African context to be secondary to the global context. There is little consideration then of what corporate governance in South Africa should look like from a South African viewpoint and the impact on corporate governance that South African cultural values and philosophies may have has not yet been seriously considered.

SOUTH AFRICAN CONSIDERATIONS

The following section considers certain issues that are specifically relevant to South African society and which may consequently have an impact on forms of corporate governance. Certain aspects of African culture and society are considered, followed by issues of social and economic development.

South Africa's people and cultures are diverse (to begin with, there are 11 official languages) and it is not possible to identify one single 'South African' culture. Nevertheless, since the country became a genuine democracy in 1994, and the African National Congress came to power, there has been a clear encouragement of 'Africanness' - an affirmation of what had up until then been denied, and more recently with Thabo Mbeki and the 'African Renaissance' project, a determination to build a country on Afro-centric rather than Euro-centric principles. Consequently, the philosophy and values discussed below are drawn from writings on 'black' African peoples and culture[8].

Person and community

Traditional African society is generally agreed to be communitarian in nature (Gyekye, 2003; Wiredu, 2003; Mbiti, 1989; Menkiti, 1979). Gyekye (2003, p.298) notes that this is sometimes seen as the defining characteristic of African cultures, and illustrates how post-independence African leaders such as Leopold Senghor, Joseph Kenyatta, Julius Nyerere and Kwame Nkrumah have both confirmed the communitarian nature of society and used it to justify socialist forms of government – as Senghor stated in 1964:

"Negro-African society puts more stress on the group than on the individuals, more on solidarity than on the activity and needs of the individual, more on the communion of persons than on their autonomy. Ours is a community society" (in Gyekye, 2003, p.298).

Gyekye (2003) distinguishes between a radical or unrestricted communitarianism that supports the ontological primacy of the community over the individual to the extent that individual personhood is granted by and can be withheld by the community, and a moderate communitarianism in which the dual nature of individuals is acknowledged: "as a communal being and as an autonomous, self-determining, self-assertive being with a capacity for evaluation and choice" (p.306). Whichever view is taken, it is apparent that when compared to Western, or Anglo-American societies, African societies have traditionally given much more weight to the rights and interests of the community than the rights and interests of the individual.

In South Africa, the importance of the community is evident in the common philosophy of 'ubuntu'. The term can be loosely translated as 'I am because you are' or "I am, because we are; and since we are, therefore I am" (Mbiti, 1989, p.110). This principle of reciprocity and interdependence is often invoked as an everyday moral principle to encourage members of society to ‘love thy neighbour’. Chinkada (in Prinsloo, 2000, p.276) regards ‘ubuntu’ as a form of African humanism that includes “alms-giving, being sympathetic, caring, sensitive to the needs of others, being respectful, considerate, patient and kind”. Prinsloo (2000) illustrates how ‘ubuntu’ can be expressed as ‘participative management’ and can even be used as a business management technique. Despite the wide (and almost fashionable) use of the term, the ‘ubuntu’ principle reflects the communitarian nature of South African society at a basic level.

The implications for corporate governance in Africa lie in the effect that this has on the choice of an appropriate model. The Anglo-American corporate environment, and shareholder and instrumental stakeholder theory rely on the primacy of individuals’ rights to private property. Such a model would then be inappropriate in a society that traditionally holds communal rights at least equal in value to, if not greater than individual rights[9].

Following from the communitarian nature of African society, it is argued that duties take precedence over rights (Gyekye, 2003; Menkiti, 1979). Gyekye believes that this priority of duties over rights is evident from the ‘natural sociality’ of the person – the fact that each person is born into relation with others. This is obviously not unique to African societies, but he believes that the fundamental awareness of others within communitarian ethics will then “obliterate the distinction between duties and so-called supererogatory acts or acts of charity, and consider all of them as our moral duties” (p.310). In this viewpoint altruism is morally obligatory. Despite the practical difficulties of implementation and possible conflict with common moral sense it can still be held as a desirable normative moral principle (similar to some religious prescriptions). Menkiti (1979) makes no connections with altruism but argues that at a basic level Western societies are organised around the rights of individuals and African societies are organised around the requirements of duty: “In the African understanding, priority is given to the duties which individuals owe to the collectivity, and their rights, whatever these may be, are seen as secondary to the exercise of their duties” (p.167). This is an ethic that is inconsistent with the existence of corporations which seek to further only their owners’ interests (duties only to shareholders) or which take cognisance of the community in the course of furthering only their owners’ interests.

Decision-making by consensus

Letza et al. (2004) note that four forms of governance can be identified: hierarchies, the market, clans or communities and associations. While attention is usually given to the first two, the latter two “may offer more value in corporate governance in non-Anglo cultures” (p.257).

Traditional African models of governance are often characterised by their mode of decision-making by consensus (Wiredu, 1997; Nash 2002). Matters affecting the community would be discussed by everybody concerned, each man was allowed a say, and the proceedings would continue until the eventual course of action was supported unanimously (Nash, p.245). The leader acted more as a facilitator than decision-maker, who ultimately brought together the views of the community. Underlying this process is the principle of respect for each individual and his viewpoint and the end result is a community that proceeds without division. While this represents a ‘traditional’ view of African governance (which may or may not actually correspond to the historical record), some aspects can be seen in modern South Africa (some aspects, such as the exclusion of women, are clearly not condoned). Nelson Mandela records how:

“as a leader, I have always followed the principles I first saw demonstrated by the regent at the Great Palace. I have always endeavoured to listen to what each and every person in a discussion had to say before venturing my own opinion. Oftentimes, my own opinion will simply represent a consensus of what I heard in the discussion.” (quoted in Nash, 2002, p.245).

Nash goes on to show how this role of the leader in representing the differing views of the people to come to a consensus is evident in the ANC’s apparent “shifting” economic policies (Socialism vs Capitalism) as well as in the political negotiations that led to a peaceful democratic South Africa in 1994. It could perhaps also shed light on the ANC’s current policy of ‘quiet diplomacy’ towards neighbouring Zimbabwe.

Wiredu (1997) regards reconciliation and dialogue to be two defining characteristics of consensual governance, characteristics that stand in contrast to the adversarial relationships that characterise corporate decision-making in many Western countries. In comparison with the traditional African structures that encourage dialogue and consensus, decision-making in the Anglo-American model is typically performed by directors who take shareholder interests to be the overriding concern (although management’s interests appear to rank highly) with consideration been paid to other stakeholder interests where they can enhance shareholder wealth or for legitimacy and image management.

Social justice and development

With widespread poverty and unemployment in the region of 40%, reducing hardship and meeting the basic economic needs of South Africans is arguably the top priority of the ANC. The ANC's recent election campaign slogan is "a better life for all", reflecting the concern of many, if not most South Africans regarding unemployment, housing shortages, access to education and healthcare, issues that for most of the population received little attention before 1994. With the implementation of the Employment Equity Act of 1998 and the Broad-Based Black Economic Empowerment Act of 2003 the government actively intervenes in the economy to achieve some form of economic equality. Much of the rhetoric of the ANC, and the justification for its policies is based on the need to 'redress past wrongs' and correct the imbalances and structural faults inherited from apartheid and colonialism.

Ya-Mona (2003) draws on a moral imperative and talks about restoring the primacy of the ethical order over the economic order in the wider African context, with the first responsibility for economic action being

> "the search for well-being on a goods level necessary for people's subsistence and development; all in all, to serve people … following the moral decadence caused … by the ever-increasing importance of the powers of money and individualism"(2003, p.336).

This corresponds well with the communitarian nature of traditional African society and the emphasis on duties over rights.

In this context one can then ask what the role of the corporation is and what it should be, with respect to issues of social justice, economic equality and development. Reed (2002, p.238) identifies strong and weak forms of responsibility towards economic development. In the strong form the corporation's raison d'etre is to promote development and in the weak form promoting development is seen as a requirement to be fulfilled in order to be 'allowed' to conduct business. Considering the context outlined above it seems that a strong form of responsibility would be expected of corporations in South Africa. Ya-Mona (2003, p.336) suggests, for instance, that before a new product is produced, the corporation should at first consider whether or not the product meets people's legitimate needs and whether it "contributes to making a person more of a person" (referring to the material well-being necessary for subsistence and humanistic self-development) rather than whether or not it will sell and be profitable.

The reality is that the existing corporate environment in South Africa, even taking King II's 'inclusive' approach into consideration, does not incorporate such moral imperatives but rather promotes the profit motive, and that at best, South African corporations adopt a weak form of responsibility towards development. As Reed (2002) has noted though, many developing countries have adopted the Anglo-American model as a strategy to attract investment and as a means towards greater economic development and goes on to regard "the Anglo-American model … [as] a logical micro level complement of the macro neo-liberal global economy" (p.231). South Africa has followed suit: King II notes that "if there is a lack of good corporate governance in a market, capital will leave that market with the click of a mouse" (Introduction, para. 16). In as far as this strategy may meet the development needs of South Africa it may be appropriate; however, one may wonder how effective this strategy will prove to be:

“where are the continuing success stories of liberalisation, privatisation, deregulation, sound money and balanced budgets? Where are the emerging markets that have emerged, the developing countries that have developed … They do not exist.” (Galbraith, in Marais, 2002, p.90).

A macroeconomic strategy which relies on the ‘trickle-down’ effect of free-market capitalism to meet developmental goals is at odds with an ethics that insists on urgent human needs taking priority over profit maximisation.

IMPLICATIONS

There is an incompatibility between the aspects of African culture identified above and the Anglo-American corporate environment. The emphasis on communal rights conflicts with the individual right to private property that is fundamental in Anglo-American models; the insistence on consensus in decision-making conflicts with corporate structures where directors are appointed by only one party (shareholders), and whose interests are typically elevated above those of other stakeholders; and the urgent needs for social justice and redress of inequalities conflicts with an economic system in which development needs are a hoped-for long-term consequence of the immediate pursuit of profit and efficiency.

South Africa’s corporate environment differs in some respects to the Anglo-American approach. The state intervenes in the labour market (through the Employment Equity Act) and the capital market (through the Broad-Based Black Economic Empowerment Act), and King II departs from the shareholder model of corporate governance to present a stakeholder model, incorporating elements of both instrumental and normative stakeholder theory. While from the perspective of Western corporate governance regimes this departure is significant, even radical, it is important to recall that there is theoretical room for a stakeholder approach that is justified on purely normative grounds. South Africa's corporate environment can be described as modified Anglo-American (predominantly shareholder oriented, yet incorporating elements of both instrumental and normative stakeholder theories), and can be contrasted with the aspects of African culture outlined above which insist upon a normative stakeholder approach. As noted earlier, the difference between instrumental and normative stakeholder theories is more critical from an ethical perspective than the difference between shareholder and instrumental stakeholder theories. It is the former difference that characterises the incompatibility of the current South African corporate environment with the African values outlined above.

Against the backdrop of African communitarian values that amount to a depiction of 'the good life', the current South African corporate environment can be regarded as morally wrong, and deserving of moral sanction. This is not the sole preserve of the cultural relativist - a universalist that supports global economic exchange and growth as morally right may accept different corporate practices as examples of cultural diversity that do not conflict with the overriding ethic, and he/she may regard corporate practices that do not resonate with local cultural values as immoral (particularly where they resemble forms of colonialism/imperialism). It could, however, be suggested that, following a consequentialist ethic, maintenance of the Anglo-American model could promote African values without actually honouring them. For that to be true the Anglo-American model would have to in some way actually promote the African values in question. Supporting economic growth is not equivalent to promoting African values, so it is difficult to see how this view could resolve the incompatibility.

A practical example of the potential consequences can be seen through an interpretation of the events in Zimbabwe over recent years, which regards the controversial land redistribution program as the triumph of communal values (relating to transgressions that occurred in previous generations) and the urgent need to redress a glaring inequality (the unequal distribution of land ownership) over rights to individual private property (See Ramose, 2003; Mandaza, 1999[10]). There have been warnings over similar 'land grabs' taking place in South Africa, and although this currently appears unlikely, the Zimbabwe case provides an example of the realities of conflict between African and Western values, a conflict that in that case was unforeseen by many.

The incompatibility between African values and the South Africa corporate environment must then be resolved. It is anticipated that this can occur through change in the African values, change in the South African corporate environment, or change in both. Some prospects and possibilities for change in these areas are now considered.

<u>Prospects for African values</u>

A number of criticisms can be raised which question the exposition of African values above. Firstly, in an era of increased globalisation, society in South African society increasingly takes on the values of other cultures, particularly those of the USA. Secondly, the African values mentioned may refer to a romanticised, traditional African society that has never existed. Thirdly, this view of African values ignores the importance and influence of different groups within South Africa (such as Afrikaners, English-speaking whites, other Europeans and Indians; and rural versus urban communities) and the increased integration that has taken place (and continues to take place) since the end of apartheid. Fourthly, the experiences of ruthless and corrupt dictatorships in other parts of Africa, and lastly, the existence of a new ‘black elite’ that has benefited from a Black Economic Empowerment that has frequently failed in its attempts at being ‘Broad-Based’, and that shows no more evidence of communitarian African values than white business leaders. All of these suggest that the African values outlined above are not apparent in South African society and that there is in fact no incompatibility between the South African corporate environment and South African values.

There is, however, evidence that these values are maintained and/or encouraged. The African Renaissance project specifically encourages a ‘return’ to African culture and incorporates a determination to build structures on Afro-centric principles rather than turning to Europe or America for direction; the associated ‘rediscovery’ of traditional cultures and practices in the wake of a globalisation dominated by American culture (not limited to Africa of course); the continued rhetoric regarding social justice and ‘redressing’ past wrongs; the increased awareness of ‘ubuntu’ in recent years (the first doctorate on the subject was completed in 1997 (Broodryk, 1997), and the concept itself is now familiar to non-black South Africans); and the example of neighbouring Zimbabwe, together with threats of similar action (however unlikely) being made in Namibia and South Africa.

It can be argued that if the African values described earlier are not at all widely held, then postulating different, more commonly-held values may partially resolve the incompatibility (although the urgency of social justice concerns cannot be easily dismissed; consider, for example, Mbeki’s (1998) depiction of two separate economies – one mostly white and rich, and one mostly black and poor, as well as recent civil unrest over the slow pace of delivery of basic services such as housing and sanitation). Without empirical evidence it is impossible to conclude on whether the African values are in fact widely held and consequently this represents an important area of further research. Despite the lack of empirical support, the extremes - that the African values outlined above are held throughout South Africa, or that they are not held throughout South Africa - are highly unlikely, and the incompatibility between African values and the South African corporate environment cannot be summarily rejected by claiming that the African values are not at all held.

Assuming then that African values are held to at least some significant degree, it is also unlikely that African values will change to the point where the incompatibility with the current South African corporate environment is completely removed. Calls for such change would undoubtedly be viewed as attempts at cultural colonialism and would run contrary to the efforts at an African Renaissance. At the same time, a strict interpretation of African values cannot be maintained: the economic (not to mention political and humanitarian) effects of the land redistribution program in Zimbabwe have been devastating. Some change is necessary and could for example include a rejection of radical / unrestricted communitarianism in favour of moderate communitarianism, widespread public acceptance of individual rights to private property, and relinquishing ancestral claims based on transgressions that took place in the colonial or apartheid eras (the more recent the transgression the more radical the change). All of which would go some way to reducing the incompatibility of the corporate environment with African values.

Prospects for corporate structures

In a similar vein to the above, it is inconceivable to expect changes in the South African corporate environment that would completely remove its incompatibility with African values.

Some change in the existing corporate environment is nevertheless necessary; specifically change towards stronger normative foundations. Considerations of how this may be achieved with regard to attitudes and awareness, corporate structures, and corporate practices are outlined below:

- *Attitudes and awareness*. A far greater awareness and publicisation of normative stakeholder theory amongst business practitioners, the business media and the general public must take place. King II rejected the ‘traditional shareowner dominant view’, and, as noted above, different models of corporate governance draw on differing views of the corporation. The stakeholder view (particularly its normative aspects) is not apparent in the business media, and is not adequately taught in business education (especially where American or British textbooks are used, even where they are published as South African editions). Educators should bear some of the responsibility to ensure that normative stakeholder concerns, and the associated attitudes towards business, are embedded throughout business education. Instead of being restricted to discussions on corporate social responsibility and business ethics they should be incorporated throughout discussions of goal-setting, leadership, organisational behaviour, human resource management and financial management.

  An example of a specific area in which increased awareness both of normative stakeholder arguments and the South African environment is necessary is in the moral implications of the directors’ responsibility to the company (not necessarily the shareholders), also emphasised in King II. Goodpaster (1991) refers to the moral dilemma that occurs where management has a moral obligation to consider all of its stakeholders as well as a conflicting moral obligation in the form of its fiduciary duty to shareholders as the ‘stakeholder paradox’. He resolves the paradox by arguing that management’s responsibilities to its stakeholders (other than shareholders) are not fiduciary responsibilities, but rank alongside other general human moral obligations. However, as the common law fiduciary duty of directors is towards the company, there is not necessarily any paradox in maintaining moral obligations to both the company and to all of its stakeholders. (This does not remove the practical difficulties associated with deciding which stakeholder’s interests take precedence at any particular time). The company’s objectives are not necessarily identical with those of its shareholders, although the most obvious and immediate objective for any company is survival, which requires that sustainable profit-making activity is necessary. However a glance at company annual reports reveals that they proudly subscribe to other objectives such as providing quality products and services, providing a safe environment for employees and participating in the local community as a responsible citizen. Directors are then morally permitted, and no doubt on some occasions morally obliged, to sacrifice some economic wealth in the achievement of another objective.

- *Corporate structures*. Corporations, as more than the sum of the individuals involved, and with clear statements of mission and values, are in some ways already aligned to a communitarian outlook. Changes in legal and regulatory structures would however be necessary where the existing structures reinforce values that are incompatible with the African values discussed above. The length of time that it may take to make legal and/or regulatory changes does not negate this and the opportunity should be taken to begin the discourse over ways in which structures could be altered to better suit South African values and concerns. Issues to consider include the adoption and adherence to international accounting pronouncements and the lack of any framework for reporting to stakeholders other than shareholders, the appointment of decision-makers (directors) by shareholders only, and the uncritical adoption of the single-tiered board as the optimum decision-making structure. Consideration of corporate structures from non-Anglo-American countries (such as Germany and Japan) may also prove informative.

A common response to any proposed moves away from Anglo-American corporate structures is that they would alienate international investment and reduce international competitiveness, which would be detrimental to current attempts at reducing poverty and unemployment and undermine long-term economic growth. While the likely effects on international investment should undoubtedly be considered, the modifications to the Anglo-American model that have already occurred (the Employment Equity Act, the Broad-Based Black Economic Empowerment Act, and elements of King II) have not met with significant resistance or condemnation internationally[11] and it would be premature to assume that all legal or regulatory changes would have disastrous consequences.

- *Corporate practices*. There have been periodic attempts to incorporate African values into management practices in South Africa (Prinsloo, 2000; Christie et al., 1993; McFarlin et al., 1999; Mbigi and Maree, 1995). However, alignment with African values requires that these approaches to management become mainstream rather than alternative thinking. Links should then be drawn between African managerial approaches and aspects of management thinking in other parts of the world. Khoza (1993) acknowledged the problems of adopting a Euro-centric approach to business in South Africa and referred to the ‘community concept’ of a business which emphasises communal values over individual competitiveness and advocated business principles that are “essentially humanistic and humane and [which] should permeate the whole outlook on business methods and practices” (p.122). He has emphasised values of “creative cooperation, empathetic communication and team work” (p.123) and identified three implications from the ‘community concept’ of management (p.124):

- “a sound basis for team learning [that] would help to eliminate Eurocentric blind spots … which often degenerates into reckless individualism…”;
- “a greater sense of oneness within the corporations, thereby contributing towards changing the traditional adversarial relationship between managers and the managed into a consensual one”; and
- “corporate responsibility programmes [that] should be more natural”.

The fact that Christie et al.’s *African Management* is now out of print indicates, however, how marginal these views remain.

There are also possibilities for accounting in a ‘community concept’ of business that should be developed. Financial and sustainability reporting then becomes a means of ongoing communication with all stakeholders rather than an annual exercise in compliance or a means of enhancing legitimacy. Instead of general purpose financial statements and the corporate sustainability report that attempt to accommodate a wide range of stakeholder interests, more specific financial and sustainability reports could be directed at stakeholder groups as part of the ongoing dialogue and reconciliation process characteristic of management through consensus.

There is at the same time an obvious global trend towards increased quantity and quality of social and environmental reporting (such as through the ‘triple-bottom line’, the Global Reporting Initiative and AccountAbility 1000), a trend that is followed by large listed South African companies, although as noted earlier, South African companies have tended to lag behind. Research in this area has sought to explain social and environmental reporting through Legitimacy theory, Stakeholder theory and Political Economy theory (Deegan, 2000) and normative stakeholder concerns do not appear to be dominant motivations for most businesses (Deegan, 2002). Although social and environmental reporting undoubtedly remains relevant in South Africa in its reflection of stakeholder concerns, possible amendments to financial reporting that would be more ‘stakeholder-neutral’ could include reporting directly to stakeholders in the annual report (not only to shareholders), including the audit report; rewording the ‘profit attributable to shareholders’ to indicate company profits, or profits attributable to all stakeholders, and including the cost of equity capital as an expense (such as demonstrated in the Earnings Value Added approach).

These measures would relieve some of the tension between African values and the South African corporate environment and represent a move towards the entrenchment and application of normative stakeholder theory throughout business and permeating all aspects of business activity.

CONCLUSION

There has been no economic watershed in South Africa which compares to the 1994 nonracial elections and the political changes that have created a democratic, politically equal society. While corporate structures resemble those in Anglo-American jurisdictions, there are aspects of the South African corporate environment that suggest a more ‘inclusive’ approach than is typical in the UK or USA. This article has provided an analysis and critique of corporate governance in post-apartheid South Africa, with particular emphasis on the values implicit in the approach.

The result is the identification of an incompatibility between a given exposition of African values and the values implicit in the current South African corporate environment. The degree of the incompatibility is admittedly subject to the validity of the African values as espoused by a number of African intellectuals. Assuming that these are at least partly held, and are to some extent encouraged, a moral dilemma is presented. Admitting cultural relativism, or cultural diversity within a universalist ethical framework, suggests that a society’s values be mirrored and best expressed in institutions that are consistent with those values. The South African corporate environment can be described as a modified form of the Anglo-American model (modified by some attempts to incorporate stakeholder theory, notably in King II), with its prominence given to shareholders and the consistent primacy of economic objectives. This stands in contrast to the normative prescriptions from African intellectuals who espouse communitarian values including communal rights, consensual decision-making and a priority of ethical over economic concerns.

In a South Africa which is still recovering from colonial and apartheid values, which exists on a continent which has ample examples of failed attempts at African socialism, and which is trying to attract international investment (often from Anglo-American countries), exactly how a truly South African corporate environment should develop remains a difficult question to answer. The theoretical analysis presented sheds light on how this may be achieved: it is suggested that some compromise in the African values (as far as these are held) is necessary, particularly the more radical elements – radical communitarianism and the precedence of communal/ancestral property rights; concerning the corporate environment it is suggested that normative stakeholder concerns need to be further entrenched in business, through increased awareness of normative stakeholder theory and its implications, changes in corporate structures (at the very least, discourse on how these may or may not be appropriate) and change in corporate practices such as management techniques and corporate reporting.

ENDNOTES

[1] At March 2005, black-controlled companies represented only 4% of the market capitalisation of the JSE Securities Exchange, down from a high of 7% in November 1998 (BusinessMap Foundation, 2005). Empowerdex (2002) calculated black ownership of the top 115 listed companies at 9.62% of their market capitalization in June 2002 and BusinessMap Foundation (2003) estimated black ownership at between 12.36% and 14.57% overall at September 2002.

[2] In 2005 eight conglomerates owned 51.3% of the JSE Securities Exchange (Who Own's Whom (Pty) Ltd, 2005).

[3] The Employment Equity Act of 1998 requires designated employers to

> "ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and … retain and develop people from designated groups …" (Section 15(2))

The measures referred to include preferential treatment and numerical goals, but exclude quotas (Section 15(3)). Designated employers are required to consult with employees, conduct an analysis, prepare an employment equity plan and report on progress made in implementing the plan.

Designated groups include black people, women and people with disabilities. 'Black' includes Africans, Coloureds and Indians. Designated employers include a person who employs 50 or more employees and a person employing less than 50 employees but whose annual turnover exceeds a predetermined amount (ranging from R2 million to R25 million).

[4] According to the Act, ‘black’ is defined to include Africans, Indians and Coloureds.

[5] The Broad-Based Black Economic Empowerment Act of 2003 includes in its objectives the promotion of economic transformation to “enable meaningful participation of black people in the economy” (Section 2(a)).

This objective is achieved through establishing criteria for the granting of licences and concessions, for preferential procurement policies for government and the public sector, for the sale of state-owned enterprises and the establishment of public-private partnerships (Cliffe Dekker, 2004). The criteria include measures of direct empowerment (ownership and management), indirect empowerment (preferential procurement and enterprise development) and human resource development (employment equity and skills development). Industry-specific charters provide ‘scorecards’ for measuring progress as well as industry goals in each of these areas. See Cliffe Dekker Attorneys’ *The Way to BEE* (2004) for further information.

[6] One can also wonder how good the responsibility to stakeholders can be without the need to be accountable. Is it really possible for stakeholders to hold management to account where they are not given the information to inform them of any relevant problems?

[7] It should be mentioned that King II does recognise that while South Africa is ranked highly among emerging markets for corporate governance, it is ranked low for disclosure and

transparency (Introduction, para. 15), and that the “minimalist approach to corporate governance adopted by many local companies needs to change” (Introduction, para. 15).

[8] The writings of a number of non-South African, African intellectuals are drawn upon for two reasons: Firstly, in recent decades South African intellectuals have been primarily concerned with and informed by the anti-apartheid struggle (for instance, Steve Biko’s Black Consciousness), and the issues raised here have not all been written on extensively. Secondly, although there are a multitude of African cultures, there are also certain commonalities amongst sub-Saharan African peoples; it is submitted that the aspects of African society discussed here are broadly representative of these peoples, in the same way that one talks of ‘Western’, or ‘European’ values.

[9] See Etzioni (1998) for a discussion of how communitarianism can inform stakeholder theory.

[10] With specific reference to South Africa and Zimbabwe, Ramose (2003, p.471) talks of land rights belonging to ‘peoples’ and argues that “Memory evokes the old truth that the land and sovereignty over it belong to the indigenous conquered peoples … Awareness of this truth impelled them to seek justice in the form of the reversion of title to territory to its rightful holders – the indigenous conquered peoples” and regards property rights that are based on ‘conquest’ or ‘discovery’ as unsustainable in law. Mandaza (1999) acknowledges Mugabe’s political reasons for the land redistribution program but also notes (p.81) that “[reconciliation] is both an ideology and a policy that becomes increasingly untenable as the social demands of the mass of the people grow bigger and louder, in an economy that remains essentially narrow-based and of a colonial nature.”

[11] Ernst & Young's (2006) survey of the attitudes of foreign-owned multi-nationals revealed that 35% felt that the impact of BEE on investment would be negative and 35% felt it would be positive. The survey also notes that the lower the understanding of BEE by the parent company, the greater the negative perception. See *The Soul of Dell* (Dell, 2003) for an example of how one multi-national has embraced Employment Equity, Broad-Based Black Economic Empowerment and transformation in general.

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